

**DEVELOPING A SEXUAL HARASSMENT
HOSTILE WORK ENVIRONMENT POLICY**

FIRE SERVICE FINANCIAL MANAGEMENT

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ABSTRACT

The workplace environment is changing. The diversity or culture of the workplace creates new challenges for employees and management. Whenever different cultures meet or the diversity within the culture changes, conflicts will happen.

The author explores the workplace environment dealing with sexual harassment and the creation of a hostile workplace. The research helped develop the understanding of a sexual harassment, hostile workplace environment situation, how to deal with it, what legal avenues the employee and employer has, the rights of an victim to file a complaint, and how to manage a hostile situation.

Action research was utilized to explore the department's existing sexual harassment policy and to develop a new policy that would include hostile work environments. Research resulted in the examination of what constitutes a sexual harassment, hostile workplace environment policy, what elements should be included, with the final results being the development of a model sexual harassment, hostile workplace environment policy.

The employee and employer can take steps to prevent the establishment of a sexual harassment, hostile workplace environment by making sure the employer has a policy in place with the understanding that the creation of a hostile workplace environment will not be tolerated, provide education to management and employees, and create a work environment that is productive and allows for creativity, making the workplace successful.

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INTRODUCTION

In 1994, the Fort Mojave Mesa Fire Department established a “sexual harassment” policy in accordance with the United States Equal Employment Opportunity Commission’s guidelines and Federal Law. Initially, the concept of sexual harassment existed only in sexual related claims against an employer. Since the adoption of the department’s policy, sexual harassment has now spread into every area of employment discrimination including the creation of a hostile work environment. Hostile work environment claims are based not only on sex, but also on race, religion, national origin, age, disability, veteran status, pregnancy status and even marital status.

According to the United States Supreme Court, a hostile work environment exists only where the workplace “is permeated with discriminatory intimidation, ridicule and insult that is sufficiently pervasive or severe to alter the conditions of the victim’s employment and create an abusive working environment.” A hostile work environment does not require the conduct, speech or actions to be violent, pornographic, obscene or highly offensive. Rather, a hostile work environment can be created from legitimate political, religious, artistic or social commentary or depictions.

Hostile environment sexual harassment is a situation in which the employer does or says something that makes the victim feel uncomfortable because of his or her sex. Hostile environment sexual harassment does not need to include a demand for an exchange of sex for a job benefit. It is the creation of an uncomfortable environment.

The problem with the existing fire department policy on sexual harassment is that it is not current and is limited to claims based only on sex. The purpose of this study is to evaluate the existing

fire department policy, test the current policy against the newly expanded sexual harassment hostile work environment laws and use an action research method to establish a new policy by answering the following research questions.

1. What is “Hostile Work Environment, Sexual Harassment?”
2. How can a “Hostile Work Environment, Sexual Harassment” atmosphere affect an employee?
3. What can an employer do to limit its liability against a “Hostile Work Environment, Sexual Harassment” claim?
4. What requirements should be established in developing a “Hostile Work Environment, Sexual Harassment” policy?

By answering these questions, a greater understanding of “Hostile Work Environment, Sexual Harassment” will be developed which will assist the department in establishing a new policy.

BACKGROUND AND SIGNIFICANCE

The community of Fort Mojave Mesa is a recreational-based community located along the Colorado River, where the California, Nevada and Arizona borders meet. The community of Fort Mojave Mesa is located within the unincorporated portion of Mohave County.

Emergency services are provided by the Mohave County Sheriff’s Office and the Fort Mojave Mesa Fire Department.

The fire department is a public service organization organized under provisions of the Arizona Revised Statutes, Title 41 Chapter 38 of Provincial Law. The organized fire district is in effect a separate unit of government, having its own governing body composed of elected fire commissioners. The fire district is supported by a tax levied by the fire district.

The fire department was organized in 1969 by property owners who resided within the boundaries of the proposed district. The fire department is the only organized governmental entity that is under the direct control of the community of Fort Mojave.

The community of Fort Mojave is comprised of approximately 30 square miles, with an additional 25 square miles of Fort Mojave Indian land under fire contract with the Fort Mojave Mesa Fire Department. The community is dependent on visitors who use the Colorado River and enjoy the gaming opportunities that are available on tribal properties and in the community of Laughlin, Nevada.

The Fort Mojave Mesa Fire Department services the community of Fort Mojave Mesa, providing fire and emergency medical services for over 20,000 residences. The fire department is a traditionally-based organization, serving the community out of three fire stations with 40 full time employees and ten reserve personnel.

Over the past year the fire department experienced a high attrition rate with six full time fire suppression personnel finding other fire service employment. Also noticed during this year, the department has suffered a high employee absentee rate with an increase in the use of sick leave and vacation time. The excessive leave has created a hardship on the department as fill-in personnel are needed to maintain constant manning policies, while affecting the budget with increased overtime expenditures.

An exit interview was conducted with all six suppression personnel on their last day of employment with the Fort Mojave Mesa Fire Department. The exit interview was conducted by the Fort Mojave Professional Firefighters Association, International Association of Firefighters, Local

3645. All six interviews were conducted separately with the responses given to the Fire Chief of the department.

The exit interview consisted on various questions relating to the improvement of the fire department. The six suppression personnel responded differently when asked what changes should take place to help improve the department, with all six agreeing on why they sought employment with other fire service agencies. All six suppression personnel felt that a hostile work environment had been established within the department by a few chief officers. The hostile environment was not completely sexual, but consisted on rude remarks, unwanted touching, yelling, screaming at employees, employees intentionally being placed in embarrassing situations, harassment, all creating an uncomfortable work environment, full of hostility. They felt if the hostile work environment continued, more employees would be seeking other employment.

The six suppression employees that left the department were highly skilled firefighters with paramedic level certifications. All six firefighters had been with the department for a minimum of four years, and were being replaced with firefighters of less than one year service time with basic level medical certification.

The loss of these six employees will have a dramatic effect on the department's ability to provide service to our community as well as having a major impact to the department's budget. Replacement cost of the six employees as well as the training costs required to bring the new firefighters up to a competent level will exceed one hundred thousand dollars, all due to a work environment that affects a person's ability to be creative and do their work in a way that is most productive. Hostile work environments are deadly to productivity . They are unhealthy and

potentially deadly to the people who work in them.

By understanding what creates a hostile, sexual harassment environment, the department can educate management on work environment issues, develop and adopt new policies that will provide a work environment that is productive and insures creativity for the individual. As the work environment improves, the employee will want to be at work. Less sick and vacation time will be used, which will have a significant positive impact on the budget.

Since a hostile, sexual harassment work environment impacts budgets, producing financial restraints, the Executive Fire Officer course content on Financial Management is directly linked to this project. If the work environment is not changed, the future cost to the department through attrition, productivity, liability and the use of overtime dollars will be overwhelming.

LITERATURE REVIEW

The workplace today is a cold, hostile, demanding environment, both economically and psychologically. People are emotionally, physically, and mentally exhausted. The daily demands of the job, the family and everything in between erode their energy and enthusiasm. The joy of success and the thrill of achievement are more and more difficult to attain. Dedication and commitment to the job are fading. People are becoming cynical, keeping their distance, trying not to let themselves get too involved. (Maslach, 1997)

This phenomenon represents a major setback on the road toward a better work life. Over the past century and a half, the workplace has progressed toward an ideal of community, away from the abusive exploitation of the mills and mines of the Industrial Revolution. In nineteenth-century factories, workers were seen as cogs in machines, easily replaced. They worked themselves

into early graves. Considerable effort forced exploitative labor practices to end and built workplaces in which workers could reasonably expect some job satisfaction. (Maslach, 1997)

The fruits of those efforts are now at risk. The idea of the workplace as an efficient machine is returning to undermine the ideal of the workplace as a safe and healthy setting in which people may fulfill their potential through rewarding work for which they are given fair compensation. (Maslach, 1997)

Lack of reward for contributions on the job is a mismatch between the job and person. When we don't get recognition, both the work we do and we ourselves as workers are devalued. Although everyone knows that rewards are important, this knowledge does not necessarily translate into action. Monetary rewards are easy to administer and are usually well received, but money is tight these days. Instead of enjoying financially rewarding careers, people endure the doldrums of wage freezes, the anxiety of short-term jobs, layoffs, and contract work. Most devastating for workers, is the loss of the internal reward that comes when a person takes pride in doing something of importance and value to others, and doing that job well. (Maslach, 1997)

Lack of fairness in the work environment breeds hostility. Fairness in the workplace means that people are shown respect and their self-worth is confirmed. Mutual respect among people who work together is at the heart of any sense of community. We lose trust in an organization that shows no fairness, because this implies that those in authority are not honest and do not respect who we are. Unfairness is most evident during the evaluation and promotion process. But day-to-day interactions may also be unfair, especially when people get blamed for things they didn't do. (Maslach, 1997)

Lack of fairness is also evident when there is inequity of workload or pay, or when people bend the rules or cheat in order to get ahead. And if procedures for grievance or dispute resolution don't allow both parties to have a voice, the procedures will be judged unfair. Organizational policies that send the message that money takes precedence over employees causes mutual respect and shared values to erode. (Maslach, 1997)

A hostile work environment has a high cost and deadly impact on the organization. It can be detrimental to your health, your ability to cope, and your personal lifestyle. It can lead to a serious deterioration in your job performance. And these costs are not just yours alone. They are felt by everyone who is affected by you, both on the job and at home. (Milton, 1988)

A hostile work environment can cause such physical problems as headaches, gastrointestinal illness, high blood pressure, muscle tension, and chronic fatigue. It may lead to mental distress in the form of anxiety, depression, and sleep disturbances. (Milton, 1988)

The hostile environment creates a negative downward spiral that affects performance on the job. As workers become more stressed and receive less support in their personal lives, workers become even less capable of dealing with problems on the job. Workers are likely to withdraw from the job, both psychologically and physically. They invest less time and energy in their work, do only what is absolutely necessary, and are absent more often. In addition to doing less, they do their work less well. High-quality work requires time and effort, commitment and creativity, but the worker is no longer willing to give these freely. The drop in quality and quantity of work produced is the occupational bottom line. (Milton, 1988)

A hostile workplace is the result of the suppression of people's natural ability to express

themselves. It is the opposite of a workplace that promotes creativity and vitality. Hostile workplaces are deadly to productivity. They are unhealthy and potentially deadly to the people who work in them. Hostility consists of verbal abuse against any person, for whatever reason, angry interchanges between people over political or territorial boundaries, one-up-manship and excessive competition, power plays and challenges issued over imagined threats to a person's authority, attempts to squash a person's ability to be creative and do their work in a way that is most productive for the individual, and enforcement of ineffective or unreasonable rules for the sole purpose of exerting power over others or to impede progress. (Elgin, 1993)

According to Dr. Suzette Elgin, hostility can make you sick or kill you! Dr. Elgin also says, hostile language can kill you as surely as hostile driving can. Hostile language hurts and frustrates and confuses people. The damage takes place slowly, over time. Exposure to chronic verbal abuse doesn't leave you with obvious cuts and bruises, but is a guaranteed recipe for ulcers, migraine headaches, high blood pressure, allergy attacks, colds, rashes, depression, accidents in the home, in the workplace and on the highway. (Elgin, 1993)

In 1964 the Federal Government became involved in the sexual harassment issue with the establishment of the United States Equal Employment Opportunity Commission (EEOC). The EEOC was given power under Title VII of the Civil Rights Act of 1964. The EEOC has defined sexual harassment/hostile work environment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature...when... submission to or rejection of such conduct is used as the basis for employment decisions...or such conduct has the purpose or effect of...creating an intimidating, hostile or offensive working environment." (EEOC, 1998)

The EEOC divided sexual harassment into two distinct areas, “quid pro quo” and “hostile environment”. In “quid pro quo” cases, a single sexual advance may constitute harassment if it is linked to the granting or denial of a tangible employment action, such as discharge, demotion or undesirable reassignment or other changes in employment or employment benefits. A hostile environment claim usually requires a showing of a pattern of offensive conduct; the more egregious the conduct, the less the need to show a repetitive series of incidents. (EEOC, 1998)

To determine whether an environment is hostile, EEOC investigators look at whether the conduct was verbal or physical or both, how frequently it was repeated, whether the conduct was hostile or patently offensive, whether the alleged harasser was a co-worker or supervisor, if others joined in perpetrating the harassment, the harassment was directed at more than one individual, and what happened when senior management became aware of the situation, such as whether the offensive conduct was dealt with and immediately ended or condoned. No one factor controls. An assessment is made based upon the totality of the circumstances. The objective severity of harassment is judged from the perspective of a reasonable person, considering “all the circumstances.” (EEOC, 1998)

The EEOC views sexual harassment as a form of sex discrimination that violates TITLE VII of the Civil Rights Act of 1964. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive work environment. (EEOC, 1998)

Sexual harassment can occur in a variety of circumstances. The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex. The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct. Unlawful sexual harassment may occur without economic injury to or discharge of the victim. The harasser's conduct must be unwelcome. It is helpful for the victim to directly inform the harasser that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available. (EEOC, 1998)

An employer can be held liable for creating a hostile work environment if the employer is made aware of the hostile environment, and does not take any appropriate action to correct the problem. However, whether it was a supervisor, co-workers, or customers who created the hostile environment, if the employer is not made aware of the situation, the employer should not be held responsible for hostile environment harassment. (EEOC, 1998)

The courts have applied the concept of "hostile work environment" to situations other than those involving claims of sexual harassment. A number of courts have accepted the concept that a "hostile work environment" claim is not limited to just sexual discrimination complaints. (Lattimore v. Polaroid Corporation, 1996)

Harassment based on membership in a protected class is one form of employment discrimination cases. The courts have recognized that workplace harassment may take either of two forms. It may consist of promises of favorable treatment or threats of unfavorable treatment calculated to coerce an employee into submitting to unwelcome sexual advances (i.e., quid pro

quo harassment). While the concept of quid pro quo harassment has no application to race discrimination cases, the concept of hostile environment harassment does. (*Daniels v. Essex Group*, 1991)

A successful hostile work environment claim under Title VII is made when the plaintiff establishes that “the workplace is permeated with discriminatory intimidation, ridicule, and insult that are sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” (*Harris v. Forklift Systems, Inc.*, 1993)

Harassment of any kind is illegal and bad for business. An employer should develop a written policy concerning harassment, which clearly states that it is not only against the law, but against company policy, and will not be tolerated. It is important to establish effective complaint or grievance procedures for employees who have been victims of sexual harassment. The procedure should make it easy and comfortable for an employee to file a complaint, especially if the harasser is a direct supervisor. The procedure should also be such that a solution to the problem can be arrived at quickly and effectively. Complaints should be taken seriously, and responded to as quickly as possible. (Steel, 1998)

The employer’s strongest and best defense in a harassment action is having in place an effective enforcement mechanism. An employer’s failure to have a grievance procedure might be regarded as tacitly encouraging harassing behavior. An effective grievance procedure is one designed to encourage victims of harassment to come forward without having to complain first to the offending supervisor. It should provide, to the fullest extent, confidentiality, including protection for victims and witnesses against retaliation. (Steel, 1998)

Changing values of our society affect our work environment. Businesses are moving away from values that breed cut-throat competition, “getting mine” at any price, command and control, denial, deception, greed, blaming everyone else, violence, short-term thinking, fighting, anger, frustration, and moving to values that promote cooperation, partnership, honesty, motivation, respect sharing, accepting responsibility, creativity, flexibility, longer-term thinking, credibility of quality, balanced male/female partnerships, and diversity in ethnic, gender, life-style, and religious issues.

Once the value system changes, employees and employers understand harassment issues that control the work place environment, set policies and procedures to eliminate hostility, and accept people as unique and valuable assets to the organization, the work place will once again be creative, responsible and profitable.

PROCEDURES

Research Methodology

The desired outcome of this research project is to provide the Fort Mojave Mesa Fire Department with an up-to-date policy dealing with Sexual Harassment/Hostile Work Environment issues. The present policy is incomplete and out-dated, dealing with only sexual harassment oriented issues.

Historical research in that of a literature review was conducted to assist in the understanding of sexual harassment and hostile work environment issues, addressing employee and employer responsibilities, legal issues, establishment of policies and procedures, and what makes up a hostile work environment.

Action research was utilized in the development of a new policy on Sexual Harassment/

Hostile Work Environment. Existing policies were addressed, evaluated, and changed to meet new criteria established by the United States Equal Employment Opportunity Commission.

Collection of Data

Data information was collected from the Mohave County Public Library, Bullhead City, Arizona; Laughlin, Nevada Public Library, Laughlin; Nevada, Mohave Community College Library, Bullhead City, Arizona; On-Line Internet Services CTAZ, Bullhead City, Arizona; Fort Mojave Mesa Fire Department Library, Fort Mojave Mesa, Arizona.

Literature reviews were conducted from trade periodicals, researched studies, private management studies, court/legal opinions, and federal laws addressing harassment in the workplace.

Research limitations were discovered when researching harassment issues. The majority of harassment information was devoted to claims of sexual misconduct, even though a hostile environment can be created without sexual implications. Issues relating to workplace hostile environment are now being heard by the courts. This prompted the United States Equal Employment Opportunity Commission (EEOC) to establish guidelines on the hostile work environment within the existing policies that addressed sexual harassment.

RESULTS

Answers to Research Questions

Research question 1: What is “Hostile Work Environment, Sexual Harassment?”

Hostile work environment refers to harassment by supervisors, managers, co-workers, agents of the company/organization and outside vendors. A hostile work environment consists of a

condition where employees cannot do their jobs without feeling harassed or threatened.

According to most legal definitions, “hostile work environment” refers to harassment or discrimination that is a violation of a person’s civil rights based on gender, sexual orientation, race, color, nationality, ancestry, ethnic origin, religion, physical handicap/disability, medical condition, physical appearance, marital status, veteran status, and/or education.

Webster’s dictionary defines “hostile” as “relating to an enemy, marked especially by overt antagonism, unfriendly, not hospitable”.

Webster’s dictionary defines “hostility as a” hostile state, hostile action or overt acts of warfare, conflict, opposition, or resistance in thought or principle”.

Sexual harassment has been broken into two groups, “Quid Pro Quo”, and “Hostile Environment”.

Quid pro quo harassment occurs when decisions regarding employment are promised, threatened or given, based upon whether or not one or more employees will submit to sexual-oriented conduct. Quid pro quo sexual harassment is far broader than the blatant, “if you want this job [or promotion or vacation time or reassignment], you’ll have to go to bed with me” statements. Hostile environment sexual harassment occurs where the sexually-oriented conduct creates an offensive and unpleasant working environment.

Harassment is morally wrong and legally actionable. Most harassment claims are made under Title VII of the Federal Civil Rights Act of 1964. It provides that “it shall be an unlawful employment practice for an employer to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”

In a series of major decisions in 1998, the United States Supreme court clarified and broadened the law. In a unanimous decision in March, 1998 the Court said: “When the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment, Title VII is violated.”

The Federal Equal Employment Opportunity Commission (EEOC) has defined sexual harassment as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct is used as the basis for employment decisions or such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment.”

Hostile environment sexual harassment is a situation in which the employer (or a supervisor or co-worker) does or says things that make the victim feel uncomfortable because of his or her sex. Hostile environment sexual harassment does not need to include a demand for an exchange of sex for a job benefit. It is the creation of an uncomfortable environment. For example, if two employees have a good time exchanging sexual jokes, it would not be sexual harassment. If one employee kept telling another employee sexual jokes that the second employee found offensive, it would be sexual harassment. If two employees dated and engaged in consensual sex, this would not be sexual harassment. If one of the two then wanted to terminate the relationship, and the other used the unequal relative terms and conditions of employment of the work place to further the relationship, this would be sexual harassment.

Jokes, pictures, touching, leering, unwanted request for a date have all been found by

courts to be sexual harassment. Sexual harassment can be between people of the same sex. Sexual harassment can be a woman harassing a man. Don't be taken in by the word "sexual" in the phrase hostile environment, sexual harassment. Harassment does not have to be sexually oriented. The mere continuance of a hostile environment that has made the employee uncomfortable constitutes hostile work environment, sexual harassment. The EEOC merely expanded the sexual harassment issue to include hostile work environments within a law that already exists.

Research question 2: How can a "Hostile Work Environment, Sexual Harassment" atmosphere affect an employee?

A hostile workplace is the result of the suppression of people's natural ability to express themselves. It is the opposite of a workplace that promotes creativity and vitality. Hostile workplaces are deadly to productivity. They are unhealthy and potentially deadly to the people who work in them.

Exposure to a hostile environment doesn't leave you with obvious cuts and bruises, but is a guaranteed recipe for ulcers, migraine headaches, high blood pressure, allergy attacks, accidents in the home and in the workplace, colds, rashes, depression and stress. These effects don't show up on the short term. These effects last a lifetime if not corrected.

Stress is one of the major symptoms of a hostile work environment. Stress is not only mental, but can be physical. Under stress, our bodies behave as if under attack, whether the threat to our physical or emotional well-being is actual or imagined. Chemical messengers are released, producing physical changes that prepare the body for fight or flight. If the chemical reaction to

stress continues over long periods of time, it may contribute to physical or emotional illness.

Stress signs are broken into three parts, physical, psychological, and behavioral. Physical stress signs include headaches, grinding teeth, tight and dry throat, clenched jaws, chest pain, shortness of breath, pounding heart, high blood pressure, muscle aches, indigestion, constipation or diarrhea, increased perspiration, fatigue, insomnia, or frequent illness. Psychological stress signs include anxiety, irritability, sadness, defensiveness, anger, hypersensitivity, apathy, depression, slowed thinking or racing thoughts, feelings of helplessness, hopelessness, worthlessness, lack of direction, or insecurity. Behavioral stress signs are overeating or loss of appetite, impatience, quickness to argue, procrastination, increased use of alcohol or drugs, increased smoking, withdrawal or isolation from others, neglect of responsibility, and poor job performance.

In the workplace, stress increases absences due to sick and accident leaves and diminishes the quantity and quality of productivity, as well as the quality of personal interactions. Stress is an indispensable basic life function, activating the body for work. When the stress level rises beyond normal and becomes a chronic condition, health and performance decline.

Research question 3: What can an employer do to limit its liability against a “Hostile Work Environment, Sexual Harassment” claim?

Anyone who is offended by a hostile or sexually harassing environment may theoretically sue. The employee’s offense must be reasonable. An extremely sensitive person might not be able to maintain a claim, because his/her feelings of having been offended were not reasonable.

The reasonableness is evaluated by a standard that is the same as a person in the victim’s circumstances. What a reasonable woman might think is a hostile environment is not necessarily

the same as what a man might think is a hostile environment. If it's a woman who was harassed, it's the woman's point of view that counts.

In June 1998, the Supreme Court ruled that: "An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate or successively higher authority over the employee."

The employer should develop a written policy concerning hostile work environment/sexual harassment, which clearly states that is not only against the law, but against company policy, and will not be tolerated. An effective complaint or grievance procedure for employees who have been victims of harassment should be put in place. An effective grievance procedure is one designed to encourage victims of harassment to come forward without having to complain first to the offending supervisor. It should provide, to the fullest extent confidential, including protection for victims and witnesses against retaliation. The procedure should be such that a solution to the problem can be arrived at quickly and effectively. Complaints should be taken seriously, and respond to them as quickly as possible.

The employer's strongest and best defense in a sexual harassment action is having in place an effective enforcement mechanism. An employer's failure to have a grievance procedure might be regarded as tacitly encouraging harassment behavior.

If the employer receives a harassment complaint, consult a knowledgeable attorney immediately. If the investigation is conducted under the auspices of an attorney, it is more likely to be protected against discovery because it is privileged as "attorney work product." The attorney will also make sure the investigation of any alleged harassment is both thorough and confidential, and that any

disciplinary action taken is prompt and appropriate.

Swift and effective handling of initial allegations helps both with the case at hand and may help prevent future incidences of harassment.

Research question 4: What requirements should be established in developing a “Hostile Work Environment, Sexual Harassment” policy?

Appendix “A” contains a complete “Hostile Work Environment, Sexual Harassment” policy developed through the research for the Executive Fire Officers Program, National Fire Academy.

The best defense and protection for the employer and employee is the establishment of a hostile work environment, sexual harassment policy. The policy should include an introduction made up of the department’s mission statement. The introduction sets the tone for the policy and advises all that a hostile work environment will not be tolerated, and that this type of harassment

and related retaliation are more than inappropriate behaviors, they are against the law. A legal definition of hostile work environment, sexual harassment needs to be spelled out within the policy. The definition needs to be based on laws and guidelines established by the Equal Employment Opportunity Commission. Within the definition, the two types of sexual harassment, quid pro quo and hostile environment, need to be defined with corresponding examples.

The policy should encourage employees to come forward knowing the information will be held in confidence. The policy should seek to encourage employees to express themselves freely, responsibly, and in good faith. On occasion false or frivolous claims may be made. The policy needs to address retaliation, false, frivolous, or malicious claims outlining disciplinary action concerning personal misconduct.

The work place is a place for social interaction. Amorous relationships will occur. The policy should differentiate between relations involving workers, supervisors, and those employees having direct evaluative responsibilities over other employees.

The most crucial portion of the policy is where the employee has the ability to file a complaint. The procedure should be made easy and comfortable for the employee, especially if the complaint is against a supervisor. The policy should show how the complaint is to be filed and with whom, and if the complaint is to be completed in writing or addressed verbally. After the complaint has been filed, the policy needs to spell out what the employer's responsibilities are, if an investigation will be conducted, and if so, when will it start?, who will be doing the investigation?, and will the investigation be kept confidential? If the investigation reports that harassment has in fact occurred, the policy needs to address some sort of formal action and disciplinary actions.

Once the actions of the employer is completed and the case resolved, the policy must address where the records of formal complaint, their investigations, and their resolutions will be maintained.

The last area the policy should address is the dissemination of the policy, maintenance, and revisions. The policy needs to address who will be responsible for the dissemination of the policy, maintenance, revisions, and for the development of educational materials and programs.

DISCUSSION

The American workplace is undergoing revolutionary changes: changes in the way companies do business, changes in the way companies treat employees, and changes in the way

workers interact with each other. The work structure is rapidly changing to one which requires intellectual skill and jobs requiring a skilled, flexible, retrainable person who is able to embrace change, and to add value to the task and organization.

The culture in the workplace is made up of a cohesion of values, myths, heroes, and symbols that mean a great deal to the people of the workplace. Informally, the cultural element can be described as “the way we do things around here”. Sometimes the culture is fragmented and difficult to read. Some people are loyal to their bosses, still others care only about their colleagues. Whether weak or strong, the workplace culture has a powerful influence throughout the organization. Because of this impact, the culture has a major effect on the success of the organization.

One of the key challenges for managers over the next ten years is the requirement to work well with new sorts of colleagues and to manage diversity in the workforce. The term “diversity” covers all significant differences between people, not just the obvious ones. It includes age, education, role, abilities, and experience as well as gender, race, ethnicity, language and literacy skills. Managers will have the difficult task of identifying and incorporating workforce differences into all management and leadership functions to encourage participation and the full contribution of all staff to the goals of the organization. Managing diversity includes managing legal obligations such as safety and equal opportunities. Success depends on innovation, creativity and superior customer service.

Hostile workplaces create an environment that plays against the success of the organization. The hostile environment takes away from the creativity of an individual making him

or her unhappy, unhealthy or angry. When a person is subjected to the hostile environment, they do not work hard, the productivity of the organization goes down and so do the services the organization provides. The hostile workplace becomes deadly on employee's health. There is an accountable loss of productivity when the hostile environment results in absenteeism. While a relatively small percentage of the work force may be absent on any one day, a much larger percentage is affected by diminished performance due to the added work load. If the organization must maintain a certain level to be productive, the cost of replacing an absent employee places strains on profits, or budgets.

By providing a healthy and safe work environment, employers can expect high productivity, creativity and innovation, which will result in organizational success.

RECOMMENDATIONS

Usually hostile work environments are created due to problems existing within the work place. Each person looks at a situation from their own point of view. A person may not always agree with his or her supervisor and sometimes the supervisor will make mistakes. There may be times when the individual is not doing a good job. A number of situations may arise when conflicts occur. Such disagreements can be resolved by conflict resolution, through a grievance procedure, or through disciplinary procedures.

Conflicts are a part of life. They should not be avoided when they arise. To help overcome the conflicts which lead to hostility, the organization needs to education its employees and management personnel on sexual harassment, hostile work environment issues. The organization should establish a policy with respect to sexual harassment, hostile work environment,

which is followed and enforced by all administrators, supervisors and employees.

The organization should show strong disapproval of a hostile work environment and inform employees of their right to file a complaint. Once a complaint has been filed, it is the duty of the employer to investigate the claim immediately. Employers must respond quickly and thoroughly.

The employer must stop the harassment and take appropriate disciplinary action with respect to the offense and prevent the harassment from reoccurring.

The best solution to any harassment, or conflict is to talk the disagreement out. Never accuse. Everyone makes mistakes. When someone makes a mistake, do whatever it takes to correct it. State your feelings. Always state feelings with “I feel, or I think, or I am” to describe a view. The supervisor does not know how anyone feels unless someone voices their feelings. Ask for feedback. Ask the supervisor if he or she understands the situation correctly and have acted appropriately. It is possible he or she misunderstood what happened. The supervisor may find that he or she feels differently about the situation once it is clarified. Know what needs to be done about a situation before confronting anyone about it. Get a commitment. After feelings have been stated, find out what the supervisor can do about the situation.

Compromise when necessary. Not all problems are resolved perfectly. Sometimes the employees have failed to consider the supervisor’s needs or the needs of the organization.

The ideal result of any conflict is that both parties are satisfied. Sexual harassment, hostile work environments are against the law. By providing employees with continued education and a program that prevents abuse, sexual harassment and the formation of a hostile work environment, the employer has demonstrated a commitment to following the law and it will also show all employees that this type of behavior will not be tolerated in the work place.

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APPENDIX A

FT. MOJAVE MESA FIRE DEPARTMENT ADMINISTRATIVE POLICY STATEMENT

Title: Sexual Harassment, Hostile Work Environment Policy

Prepared by: Battalion Chief Keith DeLorenzo

Approved by: Fire Chief Richard Vickers

Application: All Employees, Contract workers, Vendors, Administrators, Guests, and Visitors

Effective: January 1, 1999

I. INTRODUCTION

The Fort Mojave Mesa Fire Department is an emergency service based organization whose mission is to provide for the welfare of the residences and visitors of Ft. Mojave during emergency and non-emergency situations and to provide a fire safe environment through continued fire prevention activities. An open and honest work place is one which values and protects individual dignity and the integrity of human relationships, which is based on mutual trust, freedom of inquiry, freedom of expression, and the absence of intimidation and exploitation. An atmosphere of mutual respect and regard for individual dignity among employees is essential in order to meet the necessary goals and mission of the Fort Mojave Mesa Fire Department.

As a place of work, the Fort Mojave Mesa Fire Department must be free of inappropriate and disrespectful conduct and communication of a sexual nature, of sexual harassment, of all forms of harassment, intimidation and sexual exploitation, and of related retaliation. Such behavior is reprehensible because it subverts the mission of the Ft. Mojave Mesa Fire Department, poisons the environment, and threatens the careers, and well-being of the employees.

While harassment and related retaliation most often occur in situations where a power differential exists between the persons involved, the Ft. Mojave Mesa Fire Department recognizes that harassment and related retaliation may occur between persons of the same status. Ft. Mojave Mesa Fire Department will not tolerate any form of harassment behavior between or among any employee, vendor, contract worker, or community member which creates an unacceptable working environment.

II. DEFINITION OF SEXUAL HARASSMENT, HOSTILE WORK ENVIRONMENT

A. Legal Definition

The following definition of sexual harassment, hostile work environment is based on the guidelines of the Equal Employment Opportunity Commission, which was adopted by the United States Supreme Court.

No employee or member of the Ft. Mojave Mesa Fire Department shall engage in a sexual harassment, hostile work environment or related retaliation. Sexual harassment of employees is defined as any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. Submission to or rejection of such conduct is used as the basis for employment or decisions affecting employment; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or performance, which creates an intimidating, hostile, or offensive working environment.

B. Types of Sexual Harassment, Hostile Work Environment

1. *Quid Pro Quo* Sexual Harassment

Quid pro quo sexual harassment occurs when submission to, or rejection of, unwelcome sexual conduct is used as the basis for employment decisions affecting an individual.

Quid pro quo sexual harassment is perpetrated by someone who is in a position that provides authority over the individual being harassed. The perpetrator's intent or lack of intent to harass is not relevant to the determination of whether *quid pro quo* sexual harassment occurred.

Examples of *quid pro quo* sexual harassment include, but are not limited to:

- a. Direct proposition of a sexual nature with express or implied linkages of employment, work status, promotion, wage increases, letters of recommendation, etc., to submission to sexual advances:
- b. Direct or implied promises or threats linking employment, work status, promotion, wage increases, letters of recommendation, etc., to submission to sexual advances.

2. Hostile Environment Sexual Harassment

Hostile environment sexual harassment is unwelcome sexual conduct that is sufficiently severe or pervasive that it alters the conditions of employment or creates an environment that a reasonable person would find intimidating, hostile, or offensive.

The determination of whether an environment is “hostile” must be based on consideration of all relevant circumstances. These circumstances could include the frequency of the conduct, its severity, and whether it is physically threatening or humiliating.

Hostile environment sexual harassment can be perpetrated by staff, co-workers, persons in authority, and some third parties, such as contract employees, service and repair personnel, and anyone participating in fire department activities or using the fire department facilities. As with *quid pro quo* sexual harassment, the perpetrator’s intent or lack of intent to harass is not relevant to the determination of whether hostile environment sexual harassment occurred.

Examples of hostile environment sexual harassment include, but are not limited to:

- a. Sexual assault
- b. Direct propositions of a sexual nature
- c. Conduct which is discomforting or humiliating in nature that includes, but is not limited to one or more of the following:
 - (1) comments of a sexual nature
 - (2) sexually demeaning statement, questions, jokes, or anecdotes
 - (3) display of sexually explicit materials in the workplace
 - (d) conduct which is discomforting or humiliating in nature includes, but is not limited to, one or more of the following:
 - (1) unnecessary touching, patting, hugging, or brushing against a person’s body
 - (2) remarks of a sexual nature about a person’s body or clothing
 - (3) remarks about sexual activity or speculation about sexual experiences
 - (4) obscene sounds, or obscene gestures

(5) a creation of an environment that is unproductive, hostile, intimidating, or humiliating that is not sexually related.

C. Other Provisions

Sexual harassment, hostile work environment and related retaliation can be perpetrated by any employee, against any other employee. This includes allegations made by or against staff, and administrators.

Sexual harassment, hostile work environment and related retaliation may occur between persons of the same gender or of different genders. While different kinds of comments or conduct may not be offensive to everyone, sexual harassment and related retaliation may occur when an individual finds the behavior and/or attitudes of another intimidating, hostile, or offensive.

III. RETALIATION

This policy seeks to encourage employees, staff, and administrators, the ability to express freely, responsibly, in good faith, and in an orderly manner their concerns about any possible instances of harassment or related retaliation which they have experienced or witnessed. Any act of retaliation, reprisal, interference, restraint, penalty, discrimination, coercion, harassment, overt or covert, by any employee against another who is responsibly using this policy and its procedures interferes with free expression and openness violates this policy.

IV. FALSE, FRIVOLOUS, OR MALICIOUS CHARGES

Accusation of sexual harassment, hostile work environment and related retaliation are of utmost seriousness and should never be made casually and without cause. This policy shall not be used to bring false, frivolous, or malicious charges of sexual harassment or retaliation against staff, administrators, or employees. Disciplinary action concerning personal misconduct will be addressed according to the merit system adopted by the Ft. Mojave Mesa Fire Department.

V. A SUPERVISOR'S OBLIGATION TO REPORT

Any supervisor who observes sexual harassment, hostile workplace violations or related retaliation or who receives a written or oral report of sexual harassment, hostile workplace harassment or related retaliation shall report it to the Fire Chief.

VII. THE RIGHT OF THE FIRE DEPARTMENT TO PURSUE COMPLAINTS

The Ft. Mojave Mesa Fire Department has legal and ethical obligations to address sexual harassment, hostile work environment and related retaliation when it occurs. In certain situations (e.g., where multiple complaints are brought against the same individual), the Ft. Mojave Mesa

Fire Department may exercise its right to initiate an investigation into sexual harassment, hostile work environment and related retaliation even if the alleged subject is unwilling to pursue the complaint or believes that the complaint has been satisfactorily resolved.

VIII. COMPLAINT PROCEDURES

1. Filing a Complaint

- a. A complaint may be filed by any aggrieved person, orally or in written form. The complaint must be filed with the employees immediate supervisor.
- b. The complaint shall include the name of the complainant, the name of the respondent, the nature of the complaint, including such details as the date(s) or approximate date(s) on which the offensive act(s) occurred, a description of the offensive acts, and the remedy sought by the complainant.
- c. All complaints must be filed within 300 days of the occurrence of the incident(s). In the case of alleged continuing sexual harassment, hostile work environment or related retaliation, the complaint must be filed within 300 days of the last incident considered to be sexual harassment, hostile work environment or related retaliation.

2. Investigation

- a. Within five (5) days of receiving a formal complaint, the Fire Chief or his/her representative, shall investigate the complaint. The purpose of the investigation is to establish whether there is a reasonable basis for believing that the alleged violation of this policy has occurred.
- b. An investigation may be terminated at any time should a satisfactory resolution be reached before a written report is filed.
- c. In conducting the investigation, the Fire Chief or his/her designee, may interview the complainant, the respondent, and any other persons believed to have pertinent factual knowledge.
All employees shall cooperate with the investigation of the complaint. Failure to cooperate shall result in disciplinary action.
- d. At all times the investigating officer shall take steps to maintain strict confidentiality.
- e. The investigator shall promptly provide the respondent with a copy of the complaint. The investigation shall afford the respondent an opportunity to respond to the allegations of the complaint.

f. The investigator shall be in communication with the complainant until the complaint is resolved. The complainant shall be informed of general actions taken but shall not be informed of specific conversations held with the respondent.

g. Investigations of complaints shall be completed expeditiously, within 60 days is a desirable, but not absolute, time period for completion. If an extension of time is necessary, the complainant and the respondent will be informed in writing of the reasons for the extension, the status of the investigation, and the probable date of completion.

h. At the conclusion of the investigation, the Fire Chief or designee shall file a written report with the Chairperson of the Ft. Mojave Mesa Fire District Board. The report shall include all documents obtained in the course of the investigation. The complainant, the respondent, and the board Chairperson shall receive a copy of the report.

Possible outcomes of the investigation are:

1. A determination that the alleged events did not occur, or
2. A determination that the allegations do not constitute a violation of this policy; or
3. A negotiated settlement of the complaint; or
4. A recommendation for consideration of formal action.

i. At the conclusion of the investigation report, the Fire Chief or designee must indicate whether there was a violation of this policy. A policy violation will be found where any or all of the claims of sexual harassment, hostile work environment or related retaliation are found by a preponderance of the evidence to have occurred. A policy violation will not be found where there is a lack of a preponderance of the evidence to support any of the claims of sexual harassment or related retaliation.

Where a policy violation is found to have occurred, the Fire Chief or designee must indicate whether a recommendation for formal action should be considered by the board.

Where a policy violation is found not to have occurred, the Fire Chief or designee shall inform the parties, the Chairperson of the fire board, and close the case.

j. If the complainant disputes the findings or is dissatisfied with the recommendations of the investigation report, the complainant may appeal such findings and recommendations by filing a complaint with an external agency within its established time limits.

3. Formal Action

- a. If the investigation report recommends that the board consider whether to recommend formal action, the Chair of the Fire District Board shall, within five (5) days of receiving the investigation report, select three (3) individuals to serve on a sub-committee. The sub-committee shall be made up of one (1) member from the fire board, one (1) employee from the fire department, and one (1) member from the community located within the fire district boundaries. This sub-committee shall be made up of members with no previous involvement with the case.
- b. The sub-committee shall consider the nature and severity of the harassment or related retaliation in (1) determining whether formal action should be recommended, (2) assessing the severity of the offense, and (3) making suggestions for formal action to be taken.
- c. The sub-committee may request the complainant and the respondent to meet separately with the sub-committee. This meeting is not a hearing; it is an opportunity for the sub-committee to seek clarification of the investigation report or to gather additional information. The sub-committee has no power to take action other than to make recommendations to the Fire District Board.
- d. If the sub-committee concludes that formal action shall be recommended, the sub-committee shall submit to the Fire District Board a written report specifying the circumstances and recommendations for action.
- e. If the complainant disputes the findings or is dissatisfied with the recommendations, the complainant may appeal such findings by filing a complaint with an external agency within its established time limits.
- F. If harassment or related retaliation is found to have occurred and if formal action is recommended, the Fire Chief must take disciplinary action against the respondent.
- g. Similarly, if an intentionally false, frivolous, or malicious accusation of harassment or related retaliation is found to have been made and if formal action is recommended, the Fire Chief must take disciplinary action against the complainant.
- h. All records of formal complaints, their investigations, and their resolutions shall be maintained in the Office of the Fire Chief.